

Taylor Hwy MP 87-88 Mining Claims

- Mining Claims in the 40 Mile country are among some of the earliest mining claims staked in Alaska dating back to 1898.
- DOT is currently working on a design and realignment of the Taylor Highway between Chicken and the Eagle “Y”.
- PLO 601 8/10/49 calls for a 200’ “Feeder” classification for the “Tok – Eagle” road. – “subject to valid existing rights.”
- ARC reports indicate construction on this part of the highway was complete by September of 1950.
- SO 2665 on 10/15/56 converts PLO 601 withdrawal to a highway easement.
- The road is rough with active and inactive gold mining claims on both sides of the road.
- As a result of potential damage to the road and an assertion by the miner that they intended to work through the highway, we took a closer look at the chain of title.
- Current miner’s title traces back to George Robinson who filed continuous affidavits of labor starting in 1952.
- 1976 - FLPMA requires a claim holder file a copy of the official record of the notice or certificate of location and description of the claim prior to October 21, 1979.
- Robinson could not provide the location notices and on July 23, 1986 BLM issued a Decision invalidating the claims.
- Robinson appealed his case to the IBLA (IBLA 86-1570). Robinson claimed to have purchased the claims in 1952 although he has no deed. He says he knows claims were located in the 1920’s. Casefiles included location notices dating back to 1898.
- 1987 Robinson’s abandonment decision was vacated and remanded to BLM. “Where the record reflects that the location notices were unavailable, BLM should have considered the sufficiency of “other evidence” rather than rejecting the filings for failure to include the unavailable location notices.”
- Law:
 - 1905 *Cascaden v. Dunbar*: “As a general rule an oral agreement to convey a mining claim or an interest therein, ...is void. It must be conveyed by deed.”
 - 1938 *Nygaard v. Dickinson* – 9th Circuit: “A mining claim is “real property,” though it is possessory in character and no written instrument is necessary to create it. A written instrument is necessary to convey the interest.
 - 1977 IBLA 77-375 *Alaska Placer Co.*: “Where there is a break in the chain of title, a valid claim location can be shown by secondary evidence and even occupation. Using 30 USC 38 (1970) “This statute requires that a mineral patent applicant provide evidence of having possessed and worked the claims for the period of time equal to that prescribed by the statute of limitations for mining claims in the State or Territory where the claims are sited. In Alaska the statutory period is 10 years. (AS 9.10.030) The possession and development by a claimant based on occupation cannot be tacked on to the period of a preceding claimant if there is not conveyance of title between them.”
 - 1985 IBLA 84-111 *Hugh B. Fate* “An unsupported allegation that the previous owner “gave” him the claim 24 years ago will not suffice. The US has the right to invoke the statute of frauds in order to clear title to public lands.”
 - 1947 *USSR&M v. Lowe*: “No requirement in state law that location notices for claims made prior to 1913 be recorded. The Territorial First Legislature established such recording laws in 1913.”

- Conclusion: Because there was a break in the chain of title, the claims could not be claimed back to the date of original location whether that be 1898 or in the 1920's. The rights for the claims vested in Robinson when he started occupation in 1952 filing affidavits of labor, and were secured after 10 years of continuous filing. The construction of the Taylor highway and the PLO authority for the ROW preceded Robinson's 1952 affidavit and so the claims are subject to the highway ROW.

In August of 2012, we heard that mining activity along Jack Wade Creek at approximately 87 mile of the Taylor highway was threatening the stability of the roadbed. Contact with miner suggested their intent to mine through the road in the 2013 season. The question is how do we protect the public's right to use the highway? The claims in question are within the boundaries of our ongoing Taylor Highway MP 66 to Canadian Border reconstruction project that we have been working on for many years. This season, the furthest east segment, the Top of the World Highway will be in construction. The remaining portions are still in design and no ROW acquisition has taken place at this time. We were aware of the federal mining claims that existed along Jack Wade creek. The township containing these claims is still federally owned and subject to a Wild & Scenic River corridor. We initially prepared a title report on August 15, 2012 for the subject claim but due to lack of an accurate location, the report focused on #10 Above Lower Discovery owned by Ron Stringfellow. The actual location of the mining activity that threatens the road is the next claim to the northeast, #11 Above Lower Discovery owned by Mikhail Baburkin. He also owns the next two claims to the northeast, #12 & # 13 Above Lower Discovery. Fortunately, these claims are all within the chain of title of the report we prepared for #10 Above.

This is a very old part of Alaska with respect to mining activity with claims having been filed as early as 1898. Most of the 200' wide ROW for the Taylor highway is protected through public land orders issued near the time of the Taylor highway construction in the early 1950's. A valid federal mining claim whose entry and continuous affidavits of labor would defeat the application of these highway ROW PLOs. So one question is whether there has been a continuous chain of title that links back to the original location notice and then a continuous chain of affidavits of labor up to the current year. If that fails, one option might be an assertion of a prescriptive easement not against the federal governments' rights but against the rights of the mining claimant. The first might give us control of a 200' wide ROW across the claims and the second might provide control over the physical limits of the existing road ("ditch to ditch").

Mining Claim Validity - Taylor Hwy MP 87 – 88 Chain of Title Baburkin back to George Robinson

Baburkin Claims: No. 11 Above Lower Discovery (FF054310); No. 12 Above Lower Discovery (FF054312); No. 13 Above Lower Discovery (FF054313)

12.12.12: Doc 2012-025367-0 Affidavit of Annual Labor – Mikhail Baburkin (No 11, 12 & 13 Above) – signed 12.12.12

10.21.11: Doc 2011-020656-0 Affidavit of Annual Labor – Mikhail Baburkin (No 11, 12 & 13 Above)

– signed 10.21.11

5.6.11: Doc 2011-007851-0 Mining QCD Ronald Stringfellow to Mikhail Baburkin (No 11, 12 & 13 Above Lower Discovery) – signed 4.29.11

8.25.93: B809/P507 QCD Judy A Olson, Personal Rep George F. Robinson Est. to Ron Stringfellow (including No. 11, 12 & 13 Above) – signed 8.20.93

George Robinson Title for Claims:

George Robinson had stated that the claims had been in his name since 1952. No deed transferring title into his name can be found and no original location notices can be found. He also claimed that prior owners told him that they did not have the original location notices. Robinson filed Affidavits of Labor from March 1953 until transferred out of his estate in 1993.

The Federal Land Management and Policy Act (FLPMA) required that a claim holder file a copy of the official record of the notice or certificate of location and description of the claim prior to October 21, 1979. Robinson could not provide the location notices and on July 23, 1986 BLM issued a Decision invalidating the claims. Robinson appealed his case to the IBLA (IBLA 86-1570). After a review by BLM Solicitors, it was determined that BLM failed to consider the sufficiency of other evidence and the case was remanded to BLM. Other documentary evidence and even a history of occupation would be considered. Based on Robinson having filed affidavits of labor since 1952 and long term occupancy, BLM reversed their decision to invalidate the claims. From my review of the title documents, I believe that the reason that Robinson could never find a deed transferring title from Wade Creek Dredging Co. is because many of the claims they operated were not directly owned by them but were leased from the true owners. In the case of #11 Above Lower Discovery I believe that the claim was leased from a Lawrence Miller to the Co. Jack Wade Dredging had the rights to mine the claim but it did not appear that they had ownership of it.

Public Land Order ROW:

One question might be whether BLM's reversal only acknowledged that Robinson had met the 1979 FLPMA requirement or whether BLM acknowledges the claims validity back to his initial affidavit of labor in 1952 or whether they acknowledge that there must have been a valid and continuous claim in place even prior to Robinson's 1952 Affidavit. This could be important because if we could argue that there may not have been a valid claim in place between the date of PLO 601 on August 10, 1949 through September of 1950 when Progress reports indicate that construction is complete from the Alaska Hwy to 6 miles east of Chicken and construction in progress up to Upper Jack Wade Creek (See Tay66 Attachment), we may have an argument that the PLO ROW was in place prior to Robinson's claims that can only be documented from 1952 onward.

Prescriptive Easement ROW:

If construction of the Taylor highway across the subject mining claims was permissive, there may be no argument for a prescriptive easement. There exists a September 2, 1949 agreement (attached) between the Alaska Road Commission and the Wade Creek Mining Company that recognizes the right of the company to mine through the highway at no cost to themselves. The agreement allows for maintenance of constant traffic across the claims. Any detour would have to be constructed by the ARC. The agreement also provides for a ROW for the highway based on a finished road bed of 24 feet. (No specific ROW width) I'm not sure of the point of this ROW if the company can continue to mine through the highway at any time. The agreement does not specify claim names or numbers but is signed by L.J. Stampe for the Wade Creek Dredging Co. and the connection can be made via the only other affidavit of labor that we found for the claims in question. The affidavit was dated June 12, 1951, lists several claims including #11, 12, & 13 above Lower Discovery, and is signed by L.J. Stampe on behalf of the Wade Creek Dredging Co.

Recent Activity

3.13.13: email exchanged with Pat Miller, BLM Mining Engineer. (See attached email)

3.13.13: Spoke with Dennis Bishop. He believes most of the mining activity occurred on the south most claim, #11. He also noted that Baburkin's operation was rolled up and out of there by last August. He took everything with him leaving to question whether he would be back this spring. Dennis is in the process of opening the highway now and would not expect any mining activity to start until May. Dennis said the last year's mining activity came very close to the road and if it had gone a foot further, he would be concerned about its stability. He said it appeared that Baburkin was preparing a detour to the SE of the highway but also questioned whether he would continue mining to the NW through the road because of what appeared to be a lot of overburden to remove. He suggested I contact BLM to see if they have better info on upcoming mining activities. It may be that there is no need to take a defensive position until we know more.

3.12.13: Forwarded a Google Earth print to Dennis Bishop, Tok M&O manager showing road centerline, mining claim boundaries and section lines. Specifically highlighted are the three Baburkin claims, #11, 12, & 13 Above Lower Discovery. I asked if Dennis could provide a closer location to where Baburkin was mining close to the road last fall.

8.9.12: DNR email exchange (see attached)